FREEDOMWORKS

Lower taxes, less government, more freedom

May 24, 2006

Representative Mike Nofs
Chairman
Energy & Technology Committee
Michigan House of Representatives

Dear Chairman Nofs,

On behalf of the 20,000 members and supporters of FreedomWorks in Michigan, I urge the committee to pursue efforts to promote a truly competitive market for video programming while avoiding unnecessary regulatory burdens that limit the ability to bring new technologies and services to consumers at the lowest prices possible. The emerging broadband market requires regulators to reassess past policies as the market now contains new players and new sources of competition. HB 5895 is a major step forward for video competition in Michigan, providing consumers a real choice in the market for video services. The legislation eliminates outdated regulations to create an open and competitive market for all providers of video programming.

The goal of any regulatory reform should be establishing a framework of open competition that encourages investment and innovation while providing consumers access to new technologies and services. Choices in video programming do exist for consumers; the issue is now eliminating artificial barriers that restrict competition among potential providers. HB 5895 significantly reduces the degree of economic regulation that has burdened video programming while encouraging the cross-platform competition that is emerging between cable and new competitive video service providers.

The proposed legislation paves the way for new entrants into the video programming market. The revolution in telecommunications is breaking down barriers and monopoly providers no longer have the protection and guaranteed profits that once existed. Wireless telephone service is surpassing land lines, cable companies are providing telephone services, and now phone companies want to provide video services. Given this degree of competition, entering new markets entails a risk that did not exist in the world of regulated monopolies. Today's markets are more appropriately characterized as competitive rather than monopolistic.

While companies race to offer consumers the best in video programming, they are hamstrung by laws written for a different time and a different technology. The worst of these are franchise laws, which artificially constrain the number of providers serving consumers in any given area. In the video programming market, cable system operators are granted a franchise, or special privilege, that allows access public rights-of-way in exchange for agreeing to provide specific services for the local government. These agreements go beyond simply providing video programming to the local community. In fact, local franchise agreements can exact costs large enough to deter entry into the local market. For example, franchise agreements typically require channels for public, educational, and government programming as well as requirements to provide video, voice, and data facilities for schools or local governments. Franchise agreements provide a wide degree of discretion for local franchising authorities, including the ability to collect franchise fees up to 5 percent of a cable company's gross revenue.

It should be noted, however, that the future raises important questions about the relevance of franchising and the revenues generated through franchises. Technology is not static, and new Internet applications already are generating alternatives to existing video programming models. HB 5895 attempts to simplify the franchising process through the grant of statewide licenses that require service providers to pay 5 percent of their gross revenues in fees. While this may be welcomed by local franchise authorities, it would be more prudent to disentangle questions of revenue collection from the regulation of technology. The goal of effective tax policy should be to collect the revenues required to support government functions in a transparent and neutral manner. This is best handled through the legislative process with public participation. Relying on video programming providers to collect revenue distorts this process, and more important can distort innovation and consumer choice. This is particularly true in a dynamic market, where competition and technology have led to significant deviations from the traditional franchise model. Elevating the franchise fee to the state level may simplify the process, but it continues to distort the market and create a degree of fiscal illusion for taxpayers.

Unfortunately, franchise regulations continue to keep new technologies out of the hands of ordinary Americans. Regulatory barriers to entry continue to make it difficult for new entrants in the market for video programming. Given that the market is no longer a monopoly, it makes little sense to apply the old rules to new entrants. The FCC has found that head-to-head competition provides incentives for the incumbent cable operators to lower prices, provide additional channels at the same monthly rate, improve customer service, or add new services. Why not, then, open the way for new competitors, providing even more options for consumers? The real goal should be customer choice.

If the rationale behind franchising is based on theories of natural monopoly, recent technological advances in video programming have eliminated many of the original concerns about the possibilities of effective competition in the video programming market. Telephone companies are eager to compete. Video programming over high-speed broadband connections requires less overbuilding than a traditional cable operator, which makes entry easier and provides a source of real competition. Not only will this put downward pressure on prices as rivals battle to attract the most customers, but advances in video programming will offer a host of new customized and interactive video offerings. Customers will have more control over what they want to watch, when they want to watch it, and perhaps even the camera angle through which they'd like to watch it. The success of TiVo has shown the demand for customized and interactive television; allowing IPTV into the market could create exciting new technologies for consumers' benefit.

HB 5895 offers substantive reforms that replace much of the existing regulatory structure with open and competitive markets. This is important not only for encouraging the investment necessary to build the communications networks of the future, but also for bringing consumers the most innovative products at the lowest prices. Indeed, creating the right incentives for broadband deployment will provide a boost to the state's economy. A study by FreedomWorks found that widespread broadband deployment would create over 34,000 jobs in Michigan while boosting state output by more than $13 billion.[1]

In order to increase the quality of technology available and foster a thriving video programming market, government cannot stand in the way of investment in this dynamic sector of the economy. Telephone companies, wireless providers, cable companies, Internet Service Providers, and others are striving to provide the next generation of services for consumers. An open and competitive marketplace is the best guarantee that consumers will have the latest innovations at the lowest prices, and HB 5895 is an important step towards greater consumer choice, faster innovation, and a more competitive marketplace for video programming.

Sincerely,

Richard K. Armey
Co-Chairman, FreedomWorks

[1] Wayne T. Brough, *State Economies Can Benefit from Broadband Deployment*, CSE FreedomWorks Foundation, December 1, 2003.